

875—218.118(91D) Salary basis.

218.118(1) Eligibility. An employee will be considered to be paid “on a salary basis” if, under the employee’s employment agreement, the employee regularly receives each pay period, on a weekly or less frequent basis, a predetermined amount constituting all or part of the employee’s compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in this subrule, the employee must receive full salary for any week in which the employee performs any work without regard to the number of days or hours worked. This policy is also subject to the general rule that an employee need not be paid for any workweek in which the employee performs no work.

a. An employee will not be considered to be “on a salary basis” if deductions from the predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. Accordingly, if the employee is ready, willing, and able to work, deductions may not be made for time when work is not available.

b. Deductions may be made, however, when the employee is absent from work for a day or more for personal reasons, other than sickness or accident. Thus, if an employee is absent for a day or longer to handle personal affairs, the employee’s salaried status will not be affected if deductions are made from the employee’s salary for the absences.

c. Deductions may also be made for absences of a day or more occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by both sickness and disability. Thus, if the employer’s particular plan, policy or practice provides compensation for the absences, deductions for absences of a day or longer because of sickness or disability may be made before an employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. It is not required that the employee be paid any portion of the salary for the day or days for which the employee receives compensation for leave under the plan, policy or practice. Similarly, if the employer operates under a statutorily mandated or private sickness and disability insurance plan, deductions may be made for absences of a working day or longer if benefits are provided in accordance with the particular law or plan. In the case of a work-related accident, the “salary basis” requirement will be met if the employee is compensated for loss of salary in accordance with the applicable compensation law or the plan adopted by the employer, provided the employer also has some plan, policy or practice of providing compensation for sickness and disability other than that relating to industrial accidents.

d. Deductions may not be made for absences of an employee caused by jury duty, attendance as a witness, or temporary military leave. The employer may, however, offset any amounts received by an employee as jury or witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.

e. Penalties imposed in good faith for infractions of safety rules of major significance will not affect the employee’s salaried status. Safety rules of major significance include only those relating to the prevention of serious danger to the plant, or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines.

f. The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In that case, the exemption would not be applicable to the employee during the entire period when deductions were being made. Alternatively, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for the deductions and promises to comply in the future.

218.118(2) Minimum guarantee plus extras. Salary may consist of a predetermined amount constituting all or part of the employee’s compensation.

218.118(3) Initial and terminal weeks. Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. In such weeks the payment of a proportionate part of the employee’s salary for the time actually worked will meet the requirement.

SOURCE: 29 CFR 541.118.